

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 10, "TRAFFIC CODE", OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND AN PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

- PART 1: That Chapter 10, "Traffic Code", of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.
- PART 2: That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.
- PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed liable for a civil offense and/or guilty of a Class C misdemeanor, and, upon a finding of liability thereof, shall be punished by a civil penalty of not less than Twenty Dollars (\$20.00) nor more than Two Thousand Dollars (\$2,000.00), or upon conviction thereof, shall be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00). Said Ordinance becomes effective January 1, 2002, and at least ten (10) days after its publication in the newspaper, as provided by Section 35 of the Charter of the City of College Station.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2001.

APPROVED:

ATTEST:

LYNN McILHANEY, Mayor

Connie Hooks, City Secretary

APPROVED:



Carla A. Robinson
City Attorney

EXHIBIT "A"

That Chapter 10, "Traffic Code", Section 4, "Parking", of the Code of Ordinances of the City of College Station, Texas, is hereby amended as set out hereafter to read as follows:

SECTION 4: ADMINISTRATIVE ADJUDICATION OF PARKING VIOLATIONS PARKING

A. PARKING VIOLATIONS MADE CIVIL OFFENSES.

- 1) A violation of a provision of this code governing the stopping, standing, or parking of a vehicle is designated as a civil offense.
- 2) A person charged with violating a standing, parking, or stopping ordinance under this code of ordinances is entitled to an administrative adjudication hearing. Such hearing shall take place no later than ten (10) business days following the date upon which a citation is issued.

CITY MANAGER'S OFFICE AUTHORIZED TO ESTABLISH PARKING REGULATIONS

~~In the best interest of public safety, movement of traffic, and general good of the public, the City Manager's office is hereby authorized to establish all parking regulations within the city limits of the City of College Station upon recommendations of the Police Department.~~

B. City Manager or His Designee

- 1) The City Manager or His Designee shall implement and enforce the provisions of this section and establish procedures consistent with this section necessary to discharge the duty or to effect the policy of this section.

CONFLICT

~~Whenever the City Manager's office determines to establish parking regulations in conflict with those established by previous ordinances, those ordinances are thereby repealed.~~

~~(Ordinance No. 979 of August 28, 1975)~~

C. HEARING OFFICER; POWERS, DUTIES AND FUNCTIONS.

1. One or more Hearings Officer shall be appointed by the City Manager or His Designee to administratively adjudicate all parking violations for which a parking citation is issued.

(a) A hearing officer shall have the authority to:

- i. Administer oaths;

- ii. Accept admissions and hear and determine contests of parking violations under this code;
- iii. Issue orders enforceable by the Municipal Court compelling the attendance of witnesses and the production of documents
- iv. Issue orders of immobilization or impoundment of vehicles;
- v. Set conditions for the release of vehicles immobilized or impounded under this chapter; and
- vi. Dismiss parking citations or cases that the hearing officer(s) determines to be unenforceable.

2. Parking Citations

- (a) The administrative adjudication process is initiated by the issuance of a parking citation by a city Parking Enforcement Officer, Code Enforcement Officer or College Station Peace Officer. A parking citation serves as the summons and notice of administrative adjudication hearing under this section.
- (b) A parking citation shall include the following information:
 - i. The nature, date, time, and location of the alleged parking violation;
 - ii. A statement that a person charged with a civil offense under the city's code of ordinances is entitled to an administrative adjudication hearing to determine liability for the charged offense and that such right to a hearing shall be exercised by mail or by appearing before a hearing officers within (10) business days from the date of the citation.
 - iii. The state license plate number of the vehicle, or if the license plate number is not visible or legible, the vehicle identification number or the state inspection tag number.
 - iv. The make of the vehicle;
 - v. A notification that failure to answer the citation or to appear at the administrative adjudication hearing is considered an admission of liability for the parking violation and will result in the assessment of civil fines, costs, and fees.

- (c) The original or a copy of a parking citation, including an electronic copy is a governmental record kept in the ordinary course of city business and is rebuttable proof of the facts it contains.
 - (d) A parking citation must be served personally on the operator of a vehicle who is present at the time of service. If the operator is not present, or cannot be personally served, the parking citation may be served by affixing the parking citation to the vehicle in a conspicuous place.
 - (e) An operator of a vehicle who is not the vehicle's owner, but who uses or operates the vehicle with the express or implied permission of the owner, is considered the owner's agent authorized to receive a parking citation in accordance with this section.
 - (f) The original and all copies of a parking citation are prima facie evidence that the parking citation was issued and that service was made in accordance with this section.
3. Liability of the Vehicle Owner and Operator; Presumption of Liability, Presumption of Ownership.
- (a) Except as provided in Subsection (b), the registered owner and the operator of a vehicle, when not the same, are both liable to the city for a parking violation charge, except that the registered owner is not liable if the owner can prove that the vehicle was operated without the owner's express or implied consent. Payment of the civil fine, costs, and fees by either the owner or operator is a final disposition of the charged violation(s).
 - (b) A vehicle owner who is engaged in the business of renting or leasing vehicles under written rental or leasing agreements is not liable for civil fines, costs, and fees imposed by the city on a rented or leased vehicle if, within thirty (30) days after receiving written notice of a parking violation, the owner provides an affidavit stating the name, address, and driver's license number and state of issuance of a person in possession of the vehicle at the time the parking citation was issued, or a copy of the lease or rental agreement in effect at the time the parking citation was issued.
 - (c) A lessor of a vehicle who fails to comply with Subsection (b) is liable for civil fines, costs, and fees.
 - (d) It is defense to a charge of a parking violation that at the time of the violation, the illegally parked vehicle was reported to a police department as having been stolen before the time of the violation and had not yet been recovered.

- (e) In a hearing to administratively adjudicate a parking citation or an appeal hearing therefrom, it is presumed that the registered owner of the vehicle for which the citation was issued is the person who stopped, stood, or parked the vehicle at the time and place of the parking violation. A computer-generated record of the registration of the vehicle with the Texas Department of Transportation showing the name of the person to whom state license plates were issued is prima facie evidence of the ownership of the vehicle.

4. Hearings

- (a) At a hearing before a hearing officer, the defendant may either admit, admit with explanation, or deny the alleged violation.
- (b) The issuing parking enforcement officer or peace officer is not required to attend the hearing.
- (c) The City's prosecuting attorney is not required to attend the hearing. However, if the defendant is represented by legal counsel, the hearing officer may notify the prosecuting attorney, who shall have the right to appear on behalf of the City at the hearing.
- (d) No formal or sworn complaint shall be necessary. The hearing officer shall base their decision upon an examination of the contents of the citation and the evidence related to ownership of the vehicle in question, the presumptions and other prima facie evidence established by this section and other applicable law, and the evidence and testimony presented by the defendant and the City. If the hearing officer determines by a preponderance of the evidence that the defendant is liable for the violation, the hearing officer shall find the defendant liable.
- (e) At the conclusion of the hearing, the hearing officer shall issue an order stating whether the defendant is liable for the violation of the parking, standing or stopping ordinance and the amount, if any, of civil fines, costs or fees assessed against the defendant.
- (f) All orders issued by the hearing officer shall be filed with the clerk of the College Station Municipal Court. All such orders shall be maintained in a separate index or file by the Municipal Court Clerk. The order may be recorded using computer printouts, microfilm, microfiche or electronic or data processing techniques.

- (g) Failure of a defendant to appear by mail or personal appearance within the aforesaid ten (10) business day period shall be considered an admission of liability for the charged offense. Such defendant shall be liable for the civil fines, costs and fees assessed by order of the hearing officer.

5. Enforcement of Order

- (a) A hearing officer's order filed under this section may be enforced by:

- i. Impounding the vehicle that is the subject of the order;
- ii. Immobilizing by placing a device that prohibits movement ("boot") on the vehicle that is the subject of the order;
- iii. Imposing an additional fine as set out by this section if not paid within the specified time; or

- (b) Provided, however, that no vehicle shall be impounded or immobilized under this section unless:

- i. The person liable under this section has three (3) or more delinquent unpaid citations in a calendar year; and
- ii. Written notice is mailed to the last known registered owner of the vehicle by Certified Mail – Return Receipt Requested with a ten 10 day return at least ten (10) business days before the vehicle is impounded or immobilized notifying the registered owner that the vehicle is subject to impoundment or immobilization under this section. Said notice shall also notify the registered owner of their right to submit information to a hearing officer regarding the propriety of impoundment or immobilization.

6. Procedures for Impoundment and/or Immobilization

- (a) When a vehicle is found parked, whether legally or illegally, at any time upon a public street or public property within the City, and such vehicle has met the criteria for immobilization or impoundment as provided in Subsection 5(b) above, any authorized employee designated by the City Manager, peace officer, or parking enforcement officer for the City, may immobilize the vehicle by the installation on, or attachment to, the vehicle of a device, or boot, designed to prohibit the movement of the vehicle. In the alternative, such vehicle may be towed and impounded.

- (b) At the time of immobilization, the person executing the immobilization shall attach to the vehicle a written notice on a form provided by the City that includes the following information:

- i. Notice that the vehicle has been immobilized pursuant to this section and that attempted movement may cause damage to the vehicle;
 - ii. Instructions as to release of the vehicle;
 - iii. Notice that the owner or operator may request a hearing regarding the immobilization within ten (10) business days following the date of immobilization; and
 - iv. Notice that the vehicle may be towed and impounded if the owner or a person authorized to act on behalf of the owner does not obtain a release of the vehicle within twenty-four (24) hours following the immobilization.
- (c) Notice that failure to request or appear at a hearing as provided in Subsection 6(b)(iii) above waives any objection to the proposed impoundment or immobilization of the vehicle.
- (d) In the event that the vehicle is towed and impounded, the owner shall be responsible for payment of applicable fees for towing, impoundment and storage in addition to the fines, costs and fees under this section.
- (e) This section is to be cumulative of existing law, and nothing herein shall be construed to restrict or limit the right to tow and impound vehicles under other applicable law.

7. Civil Fines, Costs and Fees

- (a) Civil fines, costs and fees assessed in connection with this section shall be limited to those specified below.
- (b) If the vehicle owner or operator remits payment no later than the tenth (10th) business day after issuance of the citation, or before the hearing date shown on the citation, the total fine and costs due for the violation is the amount shown on the citation as "EARLY PAYMENT FINE". If payment of the fine is made on or after the eleventh (11th) business day after issuance of the citation, the owner or operator shall remit the amount shown on the citation under "STANDARD FINE".
- (c) A payment remitted by mail is considered "remitted" on the post-marked date.
- (d) The following fines, costs and fees are established by the schedule attached hereto as schedule "A" and incorporated by reference for all purposes.

8. Certain Conduct Unlawful

- (a) It shall be unlawful for any person, other than a peace officer or employee of the City acting in the course and scope of their duties under this section, to remove or attempt to remove or to tamper in any manner with the immobilization device ("boot") installed on any vehicle pursuant to this section.
- (b) It shall be unlawful for any person, except under the direction of a peace officer, to tow or move or to cause to be towed or moved, any vehicle on which a boot is then installed pursuant to this section from the place the vehicle was booted.
- (c) It shall be unlawful for any person, other than an officer or employee of the City acting in the course and scope of their duties, or the owner or operator of a booted vehicle, to remove or relocate any notice placed upon a booted vehicle pursuant to this section.
- (d) A violation of the above listed acts is a misdemeanor and if found guilty the actor is subject to punishment by a fine as outlined in Chapter One Section Five of the College Station Code of Ordinances.

ENFORCEMENT

~~It is therefore ordered and ordained that the proper authorities be instructed to enforce parking regulations established by the City Manager's office and that anyone violating said regulations be found guilty of a misdemeanor pursuant to the General Penalty set out in Chapter 1, Section 5, of this Code of Ordinances.~~

~~(Ordinance No. 2030 of September 9, 1993)~~

D. — IMPOUNDING VEHICLES FOR UNPAID PARKING VIOLATIONS.

~~Whenever it shall be determined that any motor vehicle has, within the corporate limits of the city, accumulated four (4) or more unpaid parking violations, as defined by this Code or the motor vehicle laws of this state, such vehicle may be impounded subject to the following conditions:~~

- (1) ~~Notice of Hearing~~
 - (a) ~~Impoundment shall occur only after notice and opportunity for hearing has been offered to the last known registered owner of such motor vehicle.~~
 - (b) ~~The Clerk of the Municipal Court shall cause written notification to be sent, certified mail, return receipt requested, to the last known registered owner of the vehicle.~~
 - (c) ~~The written notification shall include the following:~~
 - (i) ~~License number of the vehicle;~~
 - (ii) ~~Name of registered owner;~~
 - (iii) ~~Brief description of all accumulated parking violations;~~

- (iv) ~~Amount assessed for each violation and total amount for all accumulated violations;~~
- (v) ~~A statement that a request for a hearing to determine whether or not the motor vehicle shall be impounded because of accumulated parking violations must be made to the Clerk of the Municipal Court, in writing, without requirement of bond, within ten (10) days after receipt of the notice;~~
- (vi) ~~A statement that failure to request such hearing before the expiration of the ten-day period, or failure to appear at a requested hearing, shall constitute a waiver of the opportunity to oppose the proposed impoundment;~~
- (vii) ~~A statement that the owner of the vehicle shall be responsible for all charges and costs incurred in providing notice, impounding such vehicle, and storage fees, in addition to all amounts assessed for the accumulated parking violations.~~

(2) ~~Hearing; Notice of Findings~~

- (a) ~~All hearings shall be conducted before a Judge of the Municipal Court and shall be limited to whether the subject motor vehicle shall be impounded for accumulated parking violations.~~
- (b) ~~Should the judge determine that a vehicle shall be impounded, he shall, either orally at the conclusion of the hearing inform or by letter notify the owner of his decision; provided, however, that no such notice is required should the owner fail to appear at the hearing.~~

(3) ~~Order of Impoundment; Issuance~~

- (a) ~~After he notifies the owner of his determination that the vehicle shall be impounded, the Judge shall sign and enter a written order, directed to the Chief of Police or any Police Officer of the City commanding the impoundment of such vehicle, which order shall be delivered by the Clerk of the Municipal Court. The Judge shall endorse on such order the date and hour of its issuance.~~
- (b) ~~If no hearing is requested by the owner of the motor vehicle, or if such owner fails to attend the hearing, any Judge of the Municipal Court may issue an order of impoundment as hereinabove described no sooner than ten (10) days after the written notice.~~
- (c) ~~A person who receives notification that his/her vehicle shall be impounded may petition the Judge to either delay issuing the order of impoundment or, if an order has been signed and issued (but not executed), recall same from the Clerk of the Municipal Court. The Judge so petitioned may, for good cause shown, grant such relief as deemed appropriate under the circumstances.~~

(4) ~~Order of Impoundment; Execution; Entry Into Vehicle; Inventory; Return~~

- (a) ~~Any Police Officer of this City may, pursuant to an order of impoundment from the Municipal Court, cause the subject motor vehicle to be seized, removed to and stored at an authorized vehicle depository, provided that no vehicle which is located on private property with the consent of the property owner may be so impounded.~~

~~(b) Should it be necessary to enter a motor vehicle in order to effectuate its impoundment, such entrance shall be made in the presence of the Police Officer supervising the impoundment.~~

~~(c) Upon execution of an order of impoundment, the Police Officer shall state on such order, or on some paper to be attached to it, the manner in which it was executed, and shall include the date and time the motor vehicle was impounded as well as its location when it was seized. The officer shall, without unnecessary delay, deliver his return to the Clerk of the Municipal Court.~~

~~(5) Unlawful to Interfere With Impoundment~~

~~It shall be unlawful for any person to knowingly, intentionally or recklessly obstruct, prevent, hinder or interfere with any Police Officer executing an order of impoundment.~~

~~(6) — Reclamation of Impounded Vehicle; Appearance Before Municipal Court; Hearing~~

~~(a) — The owner or other person with legal right or possession of a vehicle which has been impounded pursuant to an order of impoundment may reclaim such vehicle by appearing before any judge of the Municipal Court. At such time, upon presentation of evidence satisfactory to the court establishing ownership or right of possession, such person shall be required to:~~

~~(i) — Pay for the accumulated parking violations and costs immediately;~~

~~(ii) — Pay for the accumulated parking violations and costs at some later date;~~

~~(iii) — Pay for a specified portion of the accumulated parking violations and costs at designated intervals; or~~

~~(iv) — Enter a plea to any or all criminal complaints filed against him for the parking violations and post sufficient bond binding him to appear before the Municipal Court in which the causes may be pending at any time his presence may be required.~~

~~(b) — The judge before whom the owner or other person appears, in the interest of justice, may give the matter a preferential setting and after reasonable notice is provided to the state, conduct the trial immediately or as soon as is practicable.~~

~~(c) — After the owner or other person has made disposition of the accumulated parking violations and posted bond, he shall be authorized to reclaim the impounded vehicle.~~

~~(7) — Order Authorizing Release of Impounded Vehicle~~

~~Any Judge of the Municipal Court shall be authorized to issue a written order directed to the wrecker business/towing company to release the impounded vehicle to its owner or to a specified person found by the Court to have legal right of possession of the vehicle, and named in the order.~~

~~(8) — Release of Impounded Vehicle~~

~~(a) — Upon presentment of the signed order of release and proof of identity, the wrecker business/towing company in actual possession of the impounded vehicle shall release such vehicle to the person specified by the Municipal Court. The date and time that a vehicle is released shall be indicated on the order of release, or on some paper attached to it, signed by the person reclaiming the vehicle and the person releasing the vehicle, who shall thereafter return the order to the Municipal Court.~~

~~(b) — The wrecker business/towing company in possession of an impounded vehicle shall not request nor require the person reclaiming the vehicle to sign a release from liability for damages or loss unless and until the person authorized to reclaim the vehicle has been provided a meaningful opportunity to inspect the vehicle and its contents.~~

~~(c) — Any release from liability shall contain a notation of such inspection as well as an enumeration of the damages, if any, allegedly the result of the impounding of the vehicle; in addition,~~

~~any items alleged to be missing from the vehicle shall be enumerated on the release by the person reclaiming the vehicle. A copy or duplicate original of any release shall be provided to the person reclaiming an impounded vehicle.~~

~~(d) Any wrecker business/towing company impounding vehicles under this ordinance shall post notice, in a conspicuous place, of the requirements for inspection of a vehicle stated in Sections (2) and (3) above.~~

~~(9) Fees for Impounding, Storage, Etc.~~

~~Charges, fees, and costs assessed in connection with the impounding process shall be those authorized by law. No charge, fee or cost may be waived by any Judge of the Municipal Court but for good cause shown. Vehicles impounded and not reclaimed by registered owners may be sold at auction as authorized under Article 4477-9a, Texas Revised Civil Statutes.~~

~~(Ordinance No. 1707 of May 14, 1987).~~